



Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: UI-2024-002266  
First Tier No: IA/08528/2022  
PA/53571/2022

**THE IMMIGRATION ACTS**

Heard at Field House  
On 22<sup>nd</sup> July 2024

Decision & Reasons  
Promulgated  
On 13<sup>th</sup> August 2024

Before

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

Between

**IK  
(ANONYMITY DIRECTION MADE)**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court**

**Representation:**

For the Appellant: Ms Khan of counsel  
For the Respondent: Mr Wain a Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and preliminary**

1. The appellant, who was born on 1<sup>st</sup> January 1952, appealed to the First-tier Tribunal (FTT) against the respondent's decision dated 28 July 2022. In that decision the respondent decided to refuse her application for humanitarian protection and human rights protection which was made on 9 February 2022.
2. The appellant was granted anonymity pursuant to rule 13 of the First-Tier Tribunal Immigration and Asylum Chamber Rules 2014 and there is no objection to that anonymity order continuing in force in the Upper Tribunal (UT). I therefore continue that anonymity direction.
3. The appellant's appeal was heard on 8 March 2024 at Taylor House. Immigration Judge S George (the judge) dismissed her appeal on the basis she would be returned to a country, namely India, of which she found the appellant to be a national and there would not be a risk from the Taliban or of her not receiving medical treatment there. On 8 April 2024, the above decision was promulgated.
4. By way of further background, the appellant had made an unsuccessful claim to humanitarian protection on the basis she was an Afghan National who needed international protection by virtue of her imputed political opinion and risk of persecution within Afghanistan. That application was rejected by the respondent and an appeal dismissed by Immigration Judge Black on 8 August 2018. That was not challenged successfully. This was the earlier decision that the judge considered himself bound by based on the authority of **Devaseelan [2002] UKIAT 00702**. In line with the judgment in **Devaseelan** the judge also said she considered Judge Black's decision to be to be her starting point.

**The appeal to the UT**

5. On 19 April 2024, the appellant applied for permission to appeal on the basis that the previous Judge (Judge Black) had found the appellant to have "lawful residence in India" (referring to paragraph 31 at page 101

of the respondent's bundle page 104 paragraph 49-page 104 respondent's bundle). She was not, however, found to be an Indian citizen. That and other errors of fact undermined the decision in this appeal which rendered them material errors of law, therefore.

6. FTT Judge Hollings-Tennant gave permission to appeal on 10 May 2024 because he considered the judge's starting point to be incorrect. The judge was entitled to conclude, however, that the appellant's claimed visit to the Indian High Commission was "contrived" (see paragraph 3 of the grant of permission) but it may be that the appellant had not done all she reasonably could have done to establish entitlement to Indian nationality within the terms of **MA Ethiopian v SSHD [2009] EWCA Civ 289**. Judge Hollings-Tennant considered it to be at least arguable that the previous judge had erred in fact and therefore gave permission to appeal.

### **The hearing**

7. At the hearing I heard submissions from Ms Khan behalf of the appellant. Ms Khan referred to the judgment of Upper Tribunal Judge Rimington. She allowed an appeal by the respondent against the decision of First-tier Tribunal Judge Clarke to allow the appellant's appeal against the fresh decision by the respondent in 2022. It was in relation to this (new) application that the current appeal was launched. That claim appears to have been on the basis that the appellant would have had a political opinion imputed to her which may have placed her at risk from the Taliban. The respondent appealed Judge Clarke's decision to allow that appeal and the appeal eventually came before Judge Rimington. Judge Rimington said that although Judge Clarke referred to Judge Black's decision in 2018, who had acknowledged the appellant's right of abode in India, Judge Black had not made a finding as to her nationality. Nevertheless, Judge Clarke had erroneously failed to consider the earlier adverse credibility findings of Judge Black when making her/his favourable assessment. It would be the task of the judge who next considered the matter to decide the extent of her rights in India. After allowing the appeal against Judge Clarke's decision, Judge Rimington remitted back to the to the FTT for it to make a fresh decision. This ultimately came before the judge in this case-i.e. Judge S George.
8. Miss Khan submitted that the judge had failed to make a finding as to the appellant's nationality but mistakenly considered herself bound by Judge Black's decision. In fact, Judge Black made no decision as to the appellant's nationality, as is clear from Judge Rimington's decision, although she did reach an adverse view of the appellant's credibility,

something Miss Khan made little reference to. The only solution to the important error as to nationality was to remit the appeal to the FTT for a rehearing before a judge other than the judge. The judge had simply failed to engage with the issue, as she considered herself to be bound by an earlier decision. The issue of her attendance at the Indian High Commission also needed to be decided. I note however, that Judge Hollings-Tennant said that the judge was plainly entitled to decide the issue of the appellant's attendance on the Indian High Commission in the way she had. These were material matters which the next judge would have to consider, nevertheless, Miss Khan urged.

9. Ms Khan continued to summarise the background to the appeal which included the decision letter at page 42 dated 20<sup>th</sup> of July 2022 (at page 47 of the PDF). There, the respondent had clearly taken the view that the appellant was an Indian citizen. Only Indian citizens can vote in elections and as she had voted in an election the respondent's had concluded that she was indeed an Indian citizen. Judge Black did not go as far as to make any such finding, although she was invited to by the respondent.
10. I was referred to paragraph 5, page 5, where the judge correctly summarised Judge Black's decision. The evidence in support was summarised at paragraph 33 on page 8. The judge saw no reason to depart from the earlier decision but having correctly summarised that decision earlier then appears to have misunderstood it by making the finding she did on Indian nationality.
11. Mr Wain accepted that there was an error of fact but although there was no Rule 24 response the respondent's position throughout had been that it was not material. Judge Rimington pointed out in paragraph 30 that the reason the appellant may not be in possession of a residence card was that he did not need one as she was an Indian national. The burden rested on the appellant to show she was not a national of her own country. Background evidence supported the fact it was only an Indian citizens who could vote in elections. Therefore that conclusion that was open to the judge in any event . The decision "hung together" well. Mr Wain referred to paragraph 19 of the decision by the judge . There the judge had correctly posed the question: "has the appellant established that she no longer has Indian nationality or residence?" This was considered in depth by the respondent in her his/her refusal and a conclusion reached.
12. Mr Wain stood by the negative credibility assessment made by Judge Black as to the appellant's alleged attempts to obtain verification as to her Indian residence/citizenship. He pointed out the evidence summarised at page 45 of the refusal (at page 48 of the pdf), which is

part of the respondent's refusal of 2022, makes reference to the fact that the appellant claimed that she was on the electoral roll in February 2018. It was noted that her residence permit was supposed, according to her, to have expired on 30 June 2014, but Judge Black had accepted that she was in fact registered on that electoral role in February 2018. This contradicted the document produced by her suggesting her leave had expired. Judge Black found that she had been registered as an Indian voter and had legal status to reside there. Judge Black was provided with the voter information form referring to the appellant is living at a particular address in Delhi at that time and found that the appellant had been recognised by the authorities as being lawfully resident in India. That finding on that evidence was binding on later tribunals.

13. Turning to the decision of Judge George in this case, paragraph 31 suggested that the judge had engaged with the relevant evidence including the evidence considered by Judge Black. The evidence before the judge was that a further application was made on 19 February 2024 but as the appellant's daughter-in-law did not receive a response within 24 hours her reaction was to attend the High Commission on 20 February 2024 with a view to obtaining a citizenship recognition.
14. Therefore, the way the judge expressed herself in paragraph 33 did not reflect the careful reasoning set out set out by the judge. Reference to being bound by the earlier decision was an immaterial slip. the judge had in fact considered all the evidence and come to appropriate findings. It would be an astonishing of the judge, having correctly found that the appellant had a right of abode in India suddenly thought she had nationality there without reasoning how it was acquired. Furthermore, there was no challenge the article 3 assessment. I was invited to dismiss the appeal, therefore.
15. The appellant did not accept that this was a non-material error. It is obvious that Judge Black was thought to have decided issues that were not in fact decided by her. The judge placed herself in a "straitjacket". The decision as a whole could not be allowed to stand and therefore should be set aside.

## **Discussion**

16. I understand the main point of contention in this appeal to be that the judge felt bound to find as she did because Judge Black and/or the U T had so decided, not that the judge was not entitled to find that the appellant had Indian citizenship. This was the basis upon which Judge Hollings-Tennant gave permission to appeal.

17. It has not been argued before me that the judge characterising the burden of proof being on the appellant was incorrect. I note that Judge Rimington came close herself to accepting the appellant's immigration status was that of an Indian national but identified that this was for an assessment to be made on the evidence. Judge Clarke, whose decision the respondent appealed against, was found to have conducted an inadequate assessment of the evidence and in particular the earlier adverse credibility findings to which she should have attached a greater weight. Accordingly, Judge Rimington decided to set aside that decision and remit the matter to the FTT. She expressed herself to be satisfied that there was "sufficient (evidence) to discharge the respondent's burden as to nationality" and the appellant's own alleged attempts to verify her status with the Indian High Commission were effectively dishonest.
18. Given that the judge clearly referred to the appellant having been found to have residence in India by Judge Black (at paragraph 5 of her decision) the judge clearly did not regard herself as being bound by this finding. I find that the reference in the first sentence at paragraph 33 to being "bound" by the earlier decision of Judge Black was an error, but not a material one. In paragraph 28 she correctly described **Devaseelan** as being her "starting point" only but rightly acknowledged that earlier decisions should be followed unless there is a "very good reason not to do so".
19. I find that the reference in paragraph 29 to the appellant having Indian nationality was a misrepresentation of the earlier findings but this did not reflect the judge's own conclusion that she had residence there. The statement at (the first) paragraph 34 that she had "not been able to produce any evidence to indicate that she is not an Indian citizen"... is factually accurate and it seems from all previous judges that the odds were stacked against her on her assertion to the contrary. I am satisfied that the judge reached this conclusion on the evidence before her, however. As she makes clear in her assessment at paragraph 38 - 40 she fully considered the evidence of the appellant's citizenship of India and reached her own conclusion not because she considered the Judge Black had reached the same view. Rather it was based on her own assessment including the second paragraph 34 at page number 13 PDF (numbered page 11) that she was a citizen of India. Any suggestion that judge felt she was bound to so find or made an inaccurate assessment of Judge Black's decision or indeed mistook the nature of the UT's findings or conclusions, were no more than mistakes. It was I find immaterial to her other findings which overall suggested that the appellant indeed a right to reside in India. I am not convinced for the purpose of this appeal that there was a

material difference between the possession of nationality and right of abode in India but even if there were the judge did not make this error.

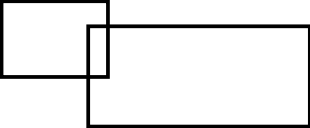
### **Conclusions**

20. This was a thorough and well-reasoned decision which contains some mistaken references and an inaccurate reference to the **Devaseelan** case. The slips, which are admitted by the respondent, were not material to the outcome. Given the adverse credibility findings by the judge, which were in line with earlier adverse credibility findings by Judge Black, this was probably the only decision reasonably open to the judge in all the circumstances. More importantly for present purposes it was reasonably open to her on the evidence as it was presented.

### **Notice of Decision**

The appeal against the FTT's decision is dismissed.

The anonymity direction made by the FTT remains in force.

Signed 

Dated 31 July 2024

Deputy Upper Tribunal Judge Hanbury